

### REMARKS

The March 30, 2006 Official Action and the references cited therein have been carefully reviewed. In view of the amendments submitted herewith and the following remarks, favorable reconsideration and allowance of this application are respectfully requested.

At the outset, it is noted that a shortened statutory response period of three (3) months was set forth in the March 30, 2006 Official Action. Therefore, the initial due date for response is June 30, 2006.

The Examiner has objected to the specification on two grounds. First, the Examiner has objected to the descriptions of Figures 5A and 8 for allegedly not properly identifying the sequences provided in those figures. Applicants have amended the descriptions of Figures 5A and 8 to properly identify the nucleotide sequences provided, thereby overcoming the instant objection.

To comply with the requirements under 37 C.F.R. §§1.821-1.825, resubmitted herewith is a listing of the nucleotide sequences presented in the above-referenced application. The sequence listing is being submitted in both paper copy and computer-readable form. Applicants respectfully request entry of the sequence listing into the above identified patent application. The undersigned hereby verifies that the paper copy and computer readable form of the sequence listing are identical and do not contain any new matter.

Second, the Examiner has objected to Appendix I for allegedly being repetitive of the Figures and, therefore, confusing. Applicants submit that Appendix I simply provides the sequences provided in the figures. However, in order to eliminate any ambiguity perceived by the Examiner, Applicants have deleted Appendix I.

Claims 7-10 have been rejected for allegedly failing to satisfy the enablement requirement of 35 U.S.C. §112, first paragraph.

The Examiner has also rejected claims 7-10 for allegedly failing to satisfy the written description requirement of 35 U.S.C. §112, first paragraph.

Additionally, claims 7-10 stand rejected under 35 U.S.C. §112, second paragraph for alleged indefiniteness.

Lastly, the Examiner has also rejected claims 7-10 under 35 U.S.C. §102(b) as allegedly anticipated by U.S. Patent 5,877,402.

The foregoing objections and rejections constitute all of the grounds set forth in the March 30, 2006 Official Action for refusing the present application.

No new matter has been introduced into this application by reason of any of the amendments presented herewith.

In view of the present amendment and the reasons set forth in this response, Applicants respectfully submit that the objections to the specification, the 35 U.S.C. §112, second paragraph rejection of claims 7-10; the 35 U.S.C. §112, first paragraph rejections of claims 7-10; and the 35 U.S.C. §102(b) rejection of claims 7-10, as set forth in the March 30, 2006 Official Action, cannot be maintained. These grounds of objection and rejection are, therefore, respectfully traversed.

**CLAIMS 7-10, AS AMENDED, SATISFY THE DEFINITENESS REQUIREMENT  
OF 35 U.S.C. §112, SECOND PARAGRAPH**

The Examiner has rejected claims 7-10 under 35 U.S.C. §112, second paragraph for alleged indefiniteness. Specifically, it is the Examiner's position that the phrase "the Prn operon" lacks antecedent basis. Applicants have deleted the phrase from the claims. Accordingly, Applicants submit that the instant rejection has been overcome and respectfully request its withdrawal.

**CLAIMS 7-10, AS AMENDED, SATISFY THE ENABLEMENT AND WRITTEN DESCRIPTION REQUIREMENTS OF 35 U.S.C. §112, FIRST PARAGRAPH**

Claims 7-10 have been rejected for allegedly failing to satisfy the enablement and written description requirements of 35 U.S.C. §112, first paragraph. The Examiner has broadly interpreted the claims to encompass promoters comprising mutations in SEQ ID NO: 51 which minimize homologous recombination with the Prn promoter. It is the Examiner's position that the specification fails to provide sufficient guidance for or description of promoters comprising mutations in SEQ ID NO: 51.

Applicants respectfully disagree with the Examiner's position. However, in the interest of expediting prosecution of the instant application, Applicants have amended claim 7 to recite an "isolated nucleic acid molecule for promoting expression of heterologous molecules in the plastids of higher plants, wherein said nucleic acid molecule comprises SEQ ID NO: 51." In light of this amendment, Applicants respectfully submit that the instant enablement and written description rejections are untenable. The withdrawal of these rejections is respectfully requested.

**CLAIMS 7-10, AS AMENDED, ARE NOT ANTICIPATED BY THE '402 PATENT**

The Examiner has rejected claims 7-10 under 35 U.S.C. §102(b) as allegedly anticipated by the '402 patent. It is the Examiner's position that the '402 patent disclose a promoter comprising mutations that would minimize homologous recombination with SEQ ID NO: 51 and constructs, vectors, and plants comprising the same.

In order to constitute evidence of lack of novelty under 35 U.S.C. §102, a prior art reference must identically disclose each and every element of the rejected claim. In re Bond, 15 U.S.P.Q.2d 1566 (Fed. Cir. 1990).

Applicants respectfully disagree with the Examiner's

position. However, as stated hereinabove, Applicants have amended claim 1 to recite SEQ ID NO: 51. The '402 patent clearly fails to disclose SEQ ID NO: 51 and cannot be properly cited as an anticipatory reference. Accordingly, the instant rejection of claims 7-10 under 35 U.S.C. §102(b) is untenable and Applicants respectfully request its withdrawal.


#### CONCLUSION

In view of the amendments presented herewith and the foregoing remarks, it is respectfully urged that the objections and rejections set forth in the March 30, 2006 Official Action be withdrawn and that this application be passed to issue.

In the event the Examiner is not persuaded as to the allowability of any claim, and it appears that any outstanding issues may be resolved through a telephone interview, the Examiner is requested to telephone the undersigned agent at the phone number give below.

Respectfully submitted,  
DANN, DORFMAN, HERRELL AND SKILLMAN  
A Professional Corporation

By

  
Robert C. Netter, Jr., Ph.D.  
PTO Registration No. 56,422

Telephone: (215) 563-4100  
Facsimile: (215) 563-4044